



# Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108  
phone: 617-727-0060, fax: 617-723-5851



**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 604**

## **IN THE MATTER OF MICHAEL A. TETREULT**

### **DISPOSITION AGREEMENT**

The State Ethics Commission ("the Commission") and Michael A. Tetreault ("Tetreault") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 21, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Tetreault. The Commission has concluded its inquiry and, on December 15, 1999, found reasonable cause to believe that Tetreault violated G.L. c. 268A.

The Commission and Tetreault now agree to the following findings of fact and conclusions of law:

1. Tetreault was, during the time relevant, a member of the board of health in Mendon. As such, Tetreault was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. The board of health is responsible for issuing disposal system construction permits on behalf of the town to individuals who desire to install or repair septic systems.
3. Prior to 1993, Tetreault worked as a private contractor installing and repairing septic systems in Mendon for private parties. Tetreault performed his work as the principal employee of Tetreault, Inc.
4. In September 1993, Tetreault received a letter from the Ethics Commission informing him that he appeared to have violated the conflict of interest law, G.L. c. 268A, §17,<sup>1</sup> by serving on the board of health and performing private septic system work pursuant to permits issued by the town. The Commission advised Tetreault to resign from the board or refrain from performing private septic system work in Mendon. The Commission also informed Tetreault that the town could vote to accept the provisions of G.L. c. 111, §26G, which statute permits a board of health member to perform private septic system work within his or her own town without violating G.L. c. 268A, §17.<sup>2</sup>
5. In 1994, Mendon town meeting voted not to accept the provisions of G.L. c. 111, §26G. Tetreault was aware of this vote.
6. Nevertheless, despite the prior warning from the Ethics Commission that Tetreault appeared to have violated G.L. c. 268A, and despite the town's vote not to accept the provisions of G.L. c. 111, §26G,

Tetreault continued to perform private septic system work in Mendon as the principal employee of Tetreault, Inc. Between 1996 and 1999, Tetreault, Inc. installed, replaced or repaired at least forty (40) septic systems for private parties in Mendon. Tetreault, Inc. was compensated by the homeowner or developer for each such job. Tetreault, Inc. received a profit of \$2,000 to \$3,000 per job, with a total profit of about \$100,000 earned over the course of three years. As the principal employee of Tetreault, Inc., Tetreault received compensation for his work.

7. Tetreault did not apply for any of the septic system permits himself, nor did he sign the permits as a member of the board of health.

8. For each of the forty septic system jobs, the health agent for the town of Mendon performed two inspections, a preliminary and a final. Tetreault was present at these inspections about 30% of the time and responded to the health agent's questions or concerns on approximately ten of those occasions.

9. Any action by the health agent was potentially appealable to the board of health, although no appeals were ever entered or heard by the board during the time relevant.

10. Section 17(a) prohibits a municipal employee from, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receiving or requesting compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest. Section 17(c) prohibits a municipal employee from, otherwise than in the proper discharge of his official duties, acting as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.<sup>3/</sup>

11. The board of health's decisions to issue septic system permits were particular matters<sup>4/</sup> in which the town was a party and had direct and substantial interests. In particular, the permits authorized activities which could significantly affect the public health and safety.

12. Between 1996 and 1999, Tetreault, Inc. performed at least forty (40) septic system installations and/or repairs pursuant to permits issued by the town. Tetreault, Inc. received compensation from its clients for the private septic system work. As the principal employee of Tetreault, Inc., Tetreault performed the work and received compensation therefor.

13. Because the septic system permits were issued by the town and authorized activities which could significantly affect the public health and safety, Tetreault's septic system work and compensation were in relation to matters in which the town was a party and had direct and substantial interests.

14. Accordingly, by receiving compensation from private parties in relation to particular matters in which the town was a party and had direct and substantial interests, Tetreault violated §17(a).

15. As described above, each inspection involved a determination by the town's health agent. Therefore, each inspection was a particular matter in which the town was a party and had direct and substantial interests.

16. Tetreault, on behalf of his clients and/or on behalf of his corporation, Tetreault, Inc., interacted with the health agent on about ten of those inspections.

17. Accordingly, by acting as agent for his private clients and/or his corporation in connection with those inspections, particular matters in which the town was a party and had direct and substantial interests, Tetreault violated §17(c).

18. According to Tetreault, he mistakenly believed that so long as he did not personally apply for or sign the septic system permits, he could perform septic system work in Mendon without violating the provisions of G.L. c. 268A. The 1993 letter from the Commission to Tetreault, however, clearly stated that Tetreault could not perform such work. In addition, Tetreault knew in 1994 that the town did not accept the provisions of G.L. c. 111, §26G, which acceptance he knew would have specifically authorized him to perform such work.

19. In view of the foregoing violations of G.L. c. 268A by Tetreault, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Tetreault:

(1) that Tetreault pay to the Commission the sum of fifteen thousand dollars (\$15,000) as a civil penalty for violating §17(a) and (c);<sup>5</sup> and

(2) that Tetreault waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: April 26, 2000**

<sup>1</sup>/Except as otherwise permitted, §17 prohibits a municipal employee from receiving compensation from or acting as agent for anyone other than the town in relation to any particular matter in which the town is a party or has a direct and substantial interest.

<sup>2</sup>/Section 26G of G.L. c. 111 provides in pertinent part:

In any city, town or district which accepts the provisions of this section notwithstanding the provisions of section seventeen of chapter two hundred and sixty-eight A, a septic system installer who is appointed or elected to the board of health may engage or work at the business of septic system installation within the area over which the board of health has jurisdiction while serving as a board member; provided, however, that neither the board of health member nor the board shall inspect a septic system installation done by said board of health member, or said member's partner, employer, employee or co-employee. The inspections of work so done shall be performed either by the board of health of another city, town or district or by a special assistant health agent who is appointed solely for the purpose of performing such inspections by the mayor of a city, the board of selectmen of a town or the governing board of a district.

<sup>3</sup>/Section 17 was amended in May 1998 to allow a municipal employee to apply on behalf of anyone for, *inter alia*, a septic system permit, or to receive compensation in relation to such permit, unless the employee is employed by or provides services to the permit-granting agency or an agency that regulates the activities of the permit-granting agency. Where Tetreault's own board issued the relevant permits and Tetreault provided services to the permit-granting agency, he may not take advantage of this provision.

<sup>4</sup>/"Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

<sup>5</sup>/The large penalty imposed here is warranted for the following reasons. First, Tetreault performed work pursuant to permits issued by his own department, and the health agent inspecting his work was an agent of Tetreault's own department. Second, Tetreault had been previously, explicitly and in writing put on notice by the Ethics Commission

that such conduct would violate §17, a warning which was underscored by the town's vote not to adopt G.L. c. 111, §26G. Finally, Tetreault profited substantially from his knowing violation of the law.